

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

April 23, 2013

In the Matter of R. K. GRAVES, JR., Minor.

No. 311711

Oakland Circuit Court

Family Division

LC No. 10-779304-NA

Before: WILDER, P.J., and METER and RIORDAN, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(g) (failure to provide proper care or custody) and (j) (reasonable likelihood that the child will be harmed if returned to parent). We affirm.

I.

Respondent and the minor child first came to the court's attention in November 2010 when the child's father, Graves, was being investigated for his gang ties. In a drug raid of the home Graves shared with his mother, the authorities discovered heroin and cocaine, as well as photographs Graves took of the then six-month-old child posed with a gun on his stomach and in the waistband of his diaper. The court took jurisdiction of the child in February 2011. Respondent, who was 16 years old when the child was born, claimed that she did not know about Graves's gang and drug-related activities. She retained custody of the child but was directed to keep petitioner informed of her and the child's whereabouts. From May to October 2011, petitioner's attempts to maintain regular contact with respondent were unsuccessful. In November 2011, the case worker learned that respondent was no longer living with her mother as she had previously reported. Respondent tested positive for marijuana, and the minor child was found to be ill-kept, filthy, smelling of garbage, and with scratches and bruises on his face.

On December 1, 2011, Graves was involved in a drive-by shooting. There was credible evidence, despite respondent's contrary assertions, that the child was in the vehicle with Graves during the shooting. The vehicle that Graves was driving was later found parked outside of respondent's apartment. Drugs and a gun, later proven to be used in the shooting, were found in respondent's apartment. On December 21, 2011, Graves and another codefendant involved in the shooting were apprehended at respondent's apartment. Respondent acknowledged that Graves had admitted to her that he was involved in the shooting and that she had spoken to him every day since the shooting. However, respondent did not tell the police about his whereabouts although she knew the authorities were looking for him. The child was removed from

respondent's care, and a termination petition citing her as a respondent was filed. Respondent was ordered to comply with and benefit from a case service plan that included a psychological evaluation, biweekly drug screens, substance abuse treatment, parenting classes, individual therapy, random drug screens, and biweekly parenting time. Respondent was to maintain a substance-free lifestyle, housing, and financial stability. Critically, respondent was to have no contact with Graves or any other person with a criminal history.

II.

Respondent pleaded no contest to the two statutory grounds, MCL 712A.19b(3)(g) and MCL 712A.19b(3)(j), for terminating her parental rights. The only issue she raises on appeal is whether the trial court clearly erred in finding that terminating her parental rights was in the child's best interests. We find no clear error in this determination.

Before terminating a respondent's parental rights, the trial court must make a finding that at least one of the statutory grounds under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Once the petitioner has proven a statutory ground for termination, the trial court must order termination if "termination of parental rights is in the child's best interests." MCL 712A.19b(5).

This Court reviews for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and its best-interest determination. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). Clear error exists "if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

The underlying issue of this case was whether the child could be kept safe in respondent's care. After a ground for termination is proven under MCL 712A.19b(3), "the parent's interest in the companionship, care, and custody of the child gives way to the state's interest in the child's protection." *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000). Respondent asserts that the trial court did not properly weigh the evidence and consider the detrimental effect of severing the loving bond between her and the child. Respondent admitted to lapses in judgment when she continued her relationship with Graves, in part due to the fact that the relationship began when she was 13, and she was still only 18 at the time of the termination hearing. Essentially, respondent contends that her immaturity should mitigate her poor judgment. We find that her arguments are unpersuasive, particularly given the compelling evidence of the gravity of circumstances in which the child was placed.

Dr. Douglas Park, who completed a court-ordered psychological evaluation of respondent in April 2012, opined that it was in the child's best interests to terminate respondent's parental rights. He testified that respondent lacked insight into herself and failed to understand the danger in which she continually placed her child. Respondent showed no insight into why it was not good for her or her child to remain in a relationship with Graves. At the time of the evaluation, respondent knew for more than one year that Graves was involved with drugs, guns, and gangs. She also knew for more than three months that he was involved in a drive-by shooting with her two-year-old child in the back seat of the vehicle. Nonetheless, respondent stated during her

evaluation that she would still be in the relationship with Graves if it were not for the court's involvement.

On appeal, respondent relies heavily on her proclamation made on the last day of the termination hearing that she had permanently severed her relationship with Graves. However, the trial court explicitly found respondent not credible on this matter, and we accord special deference to a trial court's credibility determinations. *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010); see also *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008) ("This Court will defer to the trial court's credibility determinations . . ."). The evidence is more than sufficient to support the trial court's determination. Unfortunately, respondent had previously made false claims of having ended her relationship with Graves during the case proceedings. Even after respondent supposedly had her "good bye" phone call with Graves, she talked many times with Graves during recorded phone conversations, speaking of their future plans together. There was no discussion of separating or breaking ties. Both case workers testified that respondent had repeatedly lied and could not be trusted. The evidence showed that she was also untruthful with her therapist, which undercut the therapist's testimony that respondent had made progress. Further, on the last hearing day, the day after she claimed again that she had severed her relationship with Graves, she chose to wear a necklace that symbolized her "always and forever" relationship with Graves and her child. Thus, the trial court was well within its rights to conclude that respondent's claims, that she would no longer associate with Graves and his family, were not credible.

Respondent further contends that Graves was unlikely to expose the child to further risk because he was likely to be imprisoned for a long time. This argument underscores respondent's continued lack of insight. As the trial court reasonably found, her poor judgment would continue to place the child at risk even if Graves remained incarcerated. The case worker testified that respondent failed to understand the danger to the child's safety when she continued to associate with Graves's family and other gang members. As the trial court noted, "she was asked over and over and over and over again to choose her child over drugs and guns and toxic people and she has never done it once, except that she claims she did it 24 hours ago." The proofs clearly showed that, instead of availing herself of the safe alternatives offered by her own supportive family, she continued to rely on Graves's family for support. In April 2012, respondent sought counsel from Graves's father, who was serving a life prison term for manufacturing cocaine. Respondent testified that she was not threatened in any way if she moved out of Graves's family's home and yet she remained there with Graves's family even during the intervening month between the first and last days of the termination hearing, only making some effort to move out on the eve of the last hearing day. The trial court reasonably concluded that respondent's past choices were indicative of choices she would make in the future and that she was repeatedly untruthful.

After reviewing the record as a whole, giving deference to the trial court's assessment of respondent's credibility, particularly regarding her earnestness and resolve that she had permanently severed her relationship with Graves, we are not left with a definite and firm conviction that a mistake has been made in finding that terminating her parental rights was in the child's best interests.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Michael J. Riordan